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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPNAY APPLICATION NO. 370 OF 2004

IN

BIFR CASE NO. 12 OF 1991

Dr. Writer's Food Products Pvt. Ltd.. .... Applicants.

Mr. Gaurav Joshi a/w Mr. Madhur Rai i/by M/s. Negandhi Shah and Himayatullah for the applicants.

CORAM : ANOOP V. MOHTA,J.

DATED : 12th July, 2007

ORAL JUDGMENT:-

1. In the present company application, the applicant has challenged and prayed to recall the order passed on 10/06/2004 by this Court in BIFR Case No. 12 of 1991 based upon the order passed by the BIFR dated 12/11/2003; opined that the sick industrial company M/s. Dr. Writer's Food Products Pvt. Ltd. (for short "DWFPL) is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and; that the company is not likely to become viable in future and; it is just equitable and in public interest and it should be wound up Under Section 20, Sub clause 1

of the Sick Industrial Companies (Special Provisions) Act-1985 (SICA). Accordingly, the opinion was forwarded to the High Court for necessary action according to law.

2. By the order dated 10th June, 2004, the Court has passed the following order:-

> ". There is a communication from the Registrar, B.I.F.R. along with the records and proceedings, conveying opinion of the Board that M/s. Dr.Writer Food Products Limited should be would up along with the order passed therein. As such the same is treated as petition for winding up.
>
> 2. Admit.
>
> 3. Issue notice to all parties concerned by Registered post A.D. in addition to usual mode of service by publication. Returnable after six weeks."

3. The said petition is pending in the High Court as Company Petition No. 760 of 2004.

4. The learned counsel appearing for the applicant, therefore, by invoking the provisions of Companies Act-1956 and basically the Company Court Rules 1959 (for short, "The Rules"), Rule No.6 and 7, submitted that in the present case, as admittedly the ex-parte order was passed, and wound up the company in view of

the BIFR report, without notice and without considering the fact that such order of BIFR is always subject to appeal before the appellate authority under the SICA. He further submitted to revoke the order in view of the subsequent development and basically the findings arrived at by the BIFR in the same case No. 12/1991, referring to the applicant, as under:-

> "2. Consequent upon an appeal filed by the Company against above said BIFR order dated 12/11/2003, Hon'ble AAIFR vide their order dated 27/01/2006 set aside BIFR order dated 12/11/2003 and remanded the case to BIFR with the directions to consider the fully tied up rehabilitation proposal to be submitted by the company within 45 days of their order. Now an application dated 17/04/2006 along with the balance sheet of the company as on 31/03/2006 has been submitted by the Company stating that the Directors have inducted equity of Rs.234.50 lakh as on 07/03/2006 whereby new worth has increased to Rs.628.64 lakh and accumulated losses are at Rs.562.81 lakh as on 31/03/2006. Thus the company has been able to make its net worth turn positive by Rs. 65.83 lakh and as on 31/03/2006. Therefore, the company

may be discharged from the purview of the Act.

3. Keeping in view the facts and circumstances of the case and the above factual position, we are satisfied that the net worth of the company has exceeded the accumulated losses and it does not remain to be a sick industrial company in terms of Section 3(1) of the Act. Accordingly, the company is discharged from the purview of the Act."

5. Considering the above last order passed by the BIFR dated 29/05/2006 and in view of the submission as raised on the basic foundation of issuing the winding up order dated 10/06/2004 passed by this Court just cannot be sustained. The consequences of last BIFR order dated 29/05/2006 if taken note of and even otherwise, in view of this substantial change of circumstances and factual position of the company net worth, I am inclined to accept the submission as raised by the learned counsel appearing for the applicant.

6. The provisions of the Code of Civil Procedure (CPC) are applicable in the proceedings under the Companies Act 1956, vide Ramesh B.Desai Vs. Bipin Mehta (2006) 5 S.C.C. 638. The inherent power of the company Court

just cannot be overlooked. The Court has passed the impugned order on the facts and circumstances, which are now totally changed.

7. The provisions as referred above also permits the Court to pass such orders in the interest of justice to avoid further complications in such matters. There is no point, therefore, to keep this matter pending. However, liberty is granted to the concerned or affected parties if any, to move appropriate application or petition if case is made out, inspite of the order passed by the BIFR dated 29/05/2006.

8. Resultantly, the present company application is allowed in terms of prayer Clause (a). Prayer Clause (a) reads thus:-

> "(a) That order dated 10th June, 2004 passed by this Hon'ble Court in BIFR Case No.12 of 1991 conveying the opinion that the Applicants should be wound up, be quashed and/or set aside;"

9. No costs.

[ANOOP V. MOHTA, J.]